

**Applicant:** Sylvia Ledesma

**Agent:** Garcia/Kraemer & Assoc.

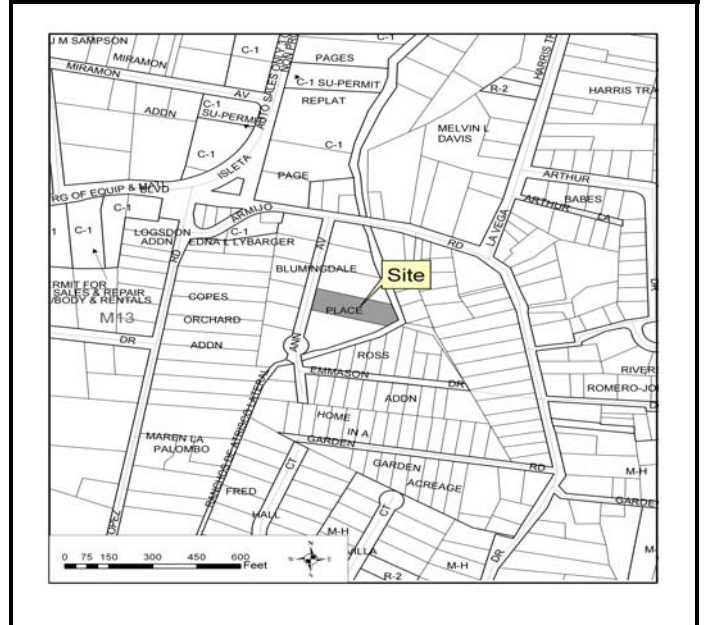
**Location:** 1028 Ann Ave. SW

**Property Size:** .59 acres (approximately)

**Existing Zone:** R-1

**Proposed Request:** Special Use Permit for Specific Use for Multiple Single Family Dwellings

**Recommendation:** Denial



**Summary:** The applicant is seeking approval of a Special Use Permit for Specific Use for Multiple Single Family Dwellings on a .59 acre parcel of land located at 1028 Ann Avenue SW. The applicant anticipates converting the existing apartments (6 units) into a multi-generational family compound that is to consist of three single family dwellings.

The site is located in the Semi Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Three (3) of the Southwest Area Plan.

This request was continued from the September 5, 2007 and January 9, 2008 County Planning Commission hearings to allow the applicant to submit a revised site plan and to work on the infrastructure issues. To date, the applicant has not submitted a revised site plan and the infrastructure issues are still not resolved.

**Staff Planner:** Adella Gallegos, Associate Program Planner

- Attachments:**
1. Application
  2. Land Use Map
  3. Non-Conforming Use (NC-211) and Affidavit
  4. Petition of Support
  5. Letter of Deferral dated January 8, 2008
  6. Additional Comments from the Office of Environmental Health
  7. Site Plan (Commissioners Only)

Bernalillo County Departments and other interested agencies reviewed this application from 7/24/07 to 8/13/07. Agency comments are verbatim and were used in preparation of this report, which being on page 11.

**AGENDA ITEM NO.: 7**  
**County Planning Commission**  
**July 2, 2008**

CSU-70038 Garcia/Kraemer & Associates, agent for Sylvia Ledesma, requests approval of a Special Use Permit for Specific Use for Multiple Single Family Dwellings on Lot 4, Block B, Blumington Place, located at 1028 Ann Avenue SW, zoned R-1, and containing approximately .59 acres. (M-13) (CONTINUED FROM THE JANUARY 9, 2008 HEARING)

**AREA CHARACTERISTICS AND ZONING HISTORY**

**Surrounding Zoning & Land Uses**

<b>Site</b>	<b>Zoning</b>	<b>Land Use</b>
	R-1	6 Apartment Units
<b>North</b>	R-1	Residential Dwellings
<b>South</b>	R-1	Residential Dwellings
<b>East</b>	R-1	Residential Dwellings and the Ranchos De Atrisco Lateral
<b>West</b>	R-1	Residential Dwellings

**BACKGROUND:**

**The Request**

The applicant seeking approval of a Special Use Permit for Specific Use for Multiple Single Family Dwellings on a .59 acre parcel of land located at 1028 Ann Avenue SW. The applicant anticipates converting the existing apartments (6 units) into a multi-generational family compound that would consist of three single family dwellings. As noted on the site plan, this would involve (1) consolidating the existing Unit 1 (duplex-1,728 sq. ft and single unit-794 sq. ft.) into one single family dwelling; (2) retaining Unit 2 (single unit-808 sq. ft) as a single family dwelling; and (3) demolishing the existing Unit 3 (duplex-968 sq. ft) and replacing it with a single family dwelling.

This site currently has an existing non-conforming use (NCU-211) (Attachment 3) dated May 22, 1974, reflecting a single family dwelling, a one unit apartment, a duplex, a private workshop and storage building, five carports and one sign. This non-conforming use was replaced by a sworn affidavit by the owner, Mr. Steven J. Schoen, dated June 1993 stating, that when the property was purchased in March of 1975 there were five completed apartments and one apartment with a fireplace and hookups for utilities and flooring, in need of further remodeling (Attachment 3).

Request Justification

The applicant contends that unique conditions exist that relate to the development history of the site and that the applicant is also proposing a decrease in the number of dwellings from 6 apartment units to three single family dwellings to be occupied by the applicant's immediate family.

**Surrounding Land Use and Zoning**

The subject site is zoned R-1 and developed with six apartment units. The site is surrounded on the north, south and west with R-1 zoning and is dominated with residential development. The Rancho De Atrisco Lateral separates the site from additional R-1 zoning to the east.

In May 1993, a zone map amendment from R-1 to R-2 (CZ-93-9) was requested for the subject site; however, the request was denied by the County Planning Commission. An appeal was filed; however, the appeal was later withdrawn by the applicant (CO-93-12).

Since the denial of the zone map amendment on the subject site, there has not been any additional or recent zoning activity that has taken place in the general vicinity of the site.

**APPLICABLE PLANS AND POLICIES:**

**Albuquerque/Bernalillo County Comprehensive Plan**

The site is located within the Semi Urban Area as designated in the Comprehensive Plan. The goal in the Comprehensive Plan is to "maintain the character and identify of semi urban areas, which have environmental, social or cultural conditions limiting urban land uses."

**Policy a** states that "development in the semi-urban area shall be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential,

flood potential, scenic qualities, recreation potential and existing development; the overall gross density shall be up to three dwelling units per acre.”

**Policy b** states “development in semi-urban areas shall include trail corridors, where appropriate, and shall be compatible with economic policies and historical and socio-cultural values, and shall maintain and integrate existing and new buildings and spaces of local significance into the community.”

**Southwest Area Plan (SWAP)**

This site is located within Residential Area Three of the Southwest Area Plan, which allows a minimum of three dwelling units per acre when City sewer is available, or a maximum of three dwelling unit per net acre when using individual liquid waste disposal systems.

**Policy 29** states “The City and County shall stabilize residential zoning and land use in the Plan area.”

- f) Encourage stabilization of residential land use through subdivision design and scale

**Policy 30** states “The residential densities contained on the follow map shall be those controlling zoning in the Plan Area.

- f) Allow up to three dwelling units per net acre in Residential Area 3 when City sewer is available, or a maximum of one dwelling unit per acre when using individual liquid waste disposal systems.”

**Policy 34** states “Standards for outdoor lighting shall be implemented to ensure that their use does not interfere with the night sky environment and unnecessarily adjacent properties.”

- a. Outdoor light poles within residential areas should not exceed sixteen (16) feet in height above existing grade; when mounted on buildings or structures, fixtures should not exceed twelve (12) feet from existing grade.

**Bernalillo County Zoning Ordinance**

Resolution 116-86 defines criteria for evaluating a Zone Map changes and Special Use Permit applications.

The following policies for deciding zone map changes and Special Use Permit applications pursuant to the adopted Zoning Ordinance.

- A. A proposed land use change must be found to be consistent with the health, safety and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.

- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans, which have been adopted by the BCC.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  - 1. An error in the original zone map.
  - 2. Changed neighborhood conditions, which justifies a change in land use or
  - 3. That a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the BCC.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- H. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- I. A zone change request, which would give a zone different from the surrounding zoning to a strip of land along a street, is generally called a "strip zoning." Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse

land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

- J. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
- K. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
- L. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

**R-1` Zone Area Regulations:**

"Minimum Lot Area and Lot Width for the R-1 zone requires that: "every lot to have a minimum area of not less than three-quarters (of an) acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan."

**Section 18. Special Use Permit Regulations.**

- A. By Special Use Permit after receipt of a recommendation from the Bernalillo County Planning Commission, the Board of County Commissioners may authorize the location of uses in any zone in which they are not permitted by other sections of this ordinance; the Bernalillo County Commission may likewise authorize the increase in height of buildings beyond the limits set by previous sections of this ordinance. With such permits, the Bernalillo County Commission may impose such conditions and limitations as it deems necessary:
  - 1. To ensure that the degree of compatibility of property uses which this section is intended to promote and preserve shall be maintained with respect to the special use on the particular site and consideration of existing and potential uses of property within the zone and the general area in which the use is proposed to be located;
  - 2. To ensure that the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety, or welfare of the public, or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration, odor, or other harmful or annoying substances;

3. To preserve the utility, integrity and character of the zone in which the use will be located, without adversely affecting adjacent zones; and
4. To ensure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.

In certain situations based on unique conditions, and where there is evidence of substantial support from the affected neighborhood residents and/or property owners within 100 feet, a Special Use Permit may be recommended for approval by the Board of county Commissioners for any of the specific uses set forth in Section 12, 13, 14, 15, 16, 17, and 18 of the Bernalillo County Zoning Ordinance. The Special Use Permits may be considered by the County Planning Commission only after it has been determined that the requested zone is inappropriate, and that unique conditions and substantial neighborhood support exist.

#### **ANALYSIS:**

##### **Surrounding Land Use and Zoning**

The subject site is zoned R-1 and developed with six apartment units and is located in an area that is predominately single-family residential. The site is surrounded on the north, south and west with R-1 zoning and the Ranchos De Atrisco Lateral separates the site from additional R-1 zoning to the east.

#### **Plans**

##### **Albuquerque Bernalillo County Comprehensive Plan**

Policy (a) of the Comprehensive Plan recommends that development in the semi-urban area shall be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; the overall gross density shall be up to three dwelling units per acre. This request does not appear to facilitate the Plan in that the proposed use is not consistent with existing development and policy criteria.

##### **Southwest Area Plan**

Policy 30(f) of the Southwest Area Plans recommends up to a minimum of three dwelling units per acre when City sewer is available to the subject site.

Given the size of this parcel in relation to the Comprehensive Plan and Southwest Area Plan, this request appears to conflict with the elements of these plans in that the request does appear to exceed density requirements.

##### **Zoning Ordinance**

The Zoning Ordinance, Section 9.D, requires that the R-1 zone lot area to have a minimum of 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan. The subject site is approximately .59 acre in size; therefore, the proposed request for three single family dwellings does not appear to comply with the R-1 area requirements. In addition, Section 18.B.32, Specific Use, requires evidence that unique conditions exist and that there is evidence of substantial neighborhood residents support. It

does not appear that the applicant has adequately demonstrated that unique conditions exist to vary from County code requirements. In addition, there have not been any submittals that reflect substantial neighborhood support.

### Agency Comments

The Environmental Health Division has noted that a single sewer account has been identified; however, no information as to which dwelling unit the account belongs to; and, that proof of connection to water and sewer to all structures and/or dwelling units will be required.

The Zoning Administrator has noted that a Non-Conforming use permit (NCU-211) for multiple dwellings and setback issues was established by Bernalillo County in 1974 that allow the property to remain nonconforming as to use until May 2033; however, if this request is recommended for approval, authorization of the Special Use Permit will discontinue recognition of the current nonconforming use permit. In addition, the conversion of the three units into one will necessitate the limitation of only one (1) kitchen per dwelling and if the intention is to have multiple kitchens, it should be clarified by the commission as an allowed use.

### Analysis Summary

Zoning	
Resolution 116-86	There has not appeared to be changed neighborhood conditions surrounding the site which justifies a change in land use.
	The applicant has not demonstrated that a different use category would be more advantageous to the community.
	The applicant has not demonstrated that unique conditions exist to vary from County code standards.
	There is lack of substantial neighborhood support.
Plans	
Comprehensive Plan	This request exceeds the recommended gross density of up to three dwelling units per acre as designated for the Semi Urban Area of the Comprehensive Plan.
Southwest Area Plan	This request conflict with the elements of the Plan in that the request exceeds the recommended density of 3 dwelling units per acre for Residential Area 3.
Other Requirements	
Environmental Health	Proof of connection to water and sewer to all structures and/or dwelling units will be required.



**Conclusion**

Resolution 116-86 establishes policies regarding zone changes and Special Use Permit requests. The Resolution states that the applicant must demonstrate that the existing zoning is inappropriate because of an error in the zone map, changed conditions in the neighborhood or community which justifies a change in land use or that a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the Board of County Commissioners. Resolution 116-86 also requires that a land use change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan. The applicant has failed to justify the request under Resolution 116-86.

The subject site is presently developed with two duplexes and two single apartment dwellings, for a total of six apartment units. Although the applicant anticipates converting the existing apartment dwellings into three single family dwellings, the applicant has not adequately demonstrated that unique conditions exist. The applicant has also failed to submit substantial support from neighborhood residents as required in Section 18.B.32.a of the Zone Code.

In addition, the request appears to conflict with the elements of the Comprehensive Plan and the Southwest Area Plan in that the proposed use is inconsistent with the density criteria called for in both Plans for this area of the South Valley.

**ADDITIONAL PLANNING DEPARTMENT COMMENTS (JANUARY 9, 2008):**

At the September 5, 2007 County Planning Commission hearing, this request was continued in order to allow the applicant to submit a revised site plan. To date, a revised site plan has not been submitted. The submitted petition of support has been verified and there appears to be a number of signatures within two hundred feet of the subject site.

**ADDITIONAL PLANNING DEPARTMENT COMMENTS (JULY 2, 2008):**

At the January 9, 2008 County Planning Commission hearing, this request was deferred at the request of the applicant. The applicant mentioned in his letter of deferral that the request is being sought in order to work on infrastructure issues (well permitting) and site plan issues (Attachment 5). To date, a revised site plan has not been submitted; and, the Office of Environmental Health requirement for the well permitting and/or municipal water connection have still not been taken care of (Attachment 6).

**RECOMMENDATION:**

Denial, based on the following Findings

Adella Gallegos  
Associate Program Planner

**FINDINGS:**

1. This is a request for a Special Use Permit for Specific Use for Multiple Single Family Dwellings on Lot 4, Block B, Blumindale Place, located at 1028 Ann Avenue SW, zoned R-1, and containing approximately .59 acres.
2. The property is located in the Semi Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Three of the Southwest Area Plan.
3. The applicant has failed to justify unique conditions and provide substantial support from neighborhood residents as required in Section 18.B.32.a of the Zone Code.
4. This request conflicts with Resolution 116-86 in that the applicant has failed to demonstrate that existing zoning is inappropriate.
5. This request conflicts with Resolution 116.86 in that the Semi Urban Area designation of the Albuquerque/Bernalillo Comprehensive Plan as articulated in Policy 3.a and Residential Area Three of the Southwest Area Plan as articulated in Policy 30.f states the density criteria for both plans which calls for an overall gross density of three dwelling units per acre.

## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

### **Environmental Health:**

Municipal water and sewer is available to this property.

A single Sewer account has been identified. No information is known for which dwelling unit this account belongs to.

No water account has been identified and no water wells are permitted for this site.

Provide proof of connection to Water and Sewer to all structures/dwelling units.

### **Fire:**

Required access: Fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction.

The required width of a apparatus access road shall not be obstructed in any manner, including parking of vehicles during construction and/or occupancy.

An additional evacuation / access road maybe required in a wildland/forest interface area.

Approval and/or occupancy pending approved water supplies for fire protection.

Fire hydrants are generally installed according to spacing criteria that varies according to proposed land use. These hydrants may be required to be supplemented with additional hydrants when actual development takes place.

The code items in this review are not intended to be a complete listing of all possible code requirements adopted by this jurisdiction. It is a guide to selected sections of the code. Additional information is required prior to approval and/or occupancy.

**UPON THE DEVELOPMENT OF THIS PROPERTY THE LOCATION AD DISTANCES  
MUST BE APPROVED BY THE FIRE MARSHAL'S OFFICE.**

### **Zoning Administrator**

Non-conforming use permit (NCU-211) for multiple dwellings and setback issues established by Bernalillo County in 1974. Current allowances permit property to remain nonconforming as to use until May 2033. However, if this request is recommended for approval, staff suggests inclusion of a finding stating that the authorization of the Special Use Permit will discontinue recognition of the current nonconforming use permit.

Parking requirements (Sec. 21.A.5.) necessitate one parking space for each bathroom or fraction thereof provided in each dwelling,, but not less than two spaces per d.u. Additional information concerning the total number of bathrooms on the property is needed for an accurate parking determination, but based on the provided site plan for the proposed development, at least six (6) off-street parking spaces will be required at this time, with one of those specifically designated for use by disabled individuals as outlined in Section 21.B.

The conversion of three units into one as noted on the site plan will necessitate the limitation of only one (1) kitchen in the dwelling (ref. Sec. 5, "Dwelling Unit"). However, if

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the intention is to have multiple kitchens within the building, this should be clarified by the commission as an allowed use.

### Zoning Enforcement Manager:

Must comply with all Bernalillo County Code regulations for this project.

There were two previous zoning violations on the property for illegal business (self healing clinic) operation and operating without a business license. Both have been abated.

Note: If nonconforming multiple (6) bldgs are to be removed in place of a special use permit allowing three dwellings units the nonconforming use should be cancelled.

New dwelling units should meet conforming use requirements.

No other adverse comment.

### Building Department Manager:

Building permits will be required for the proposed (3) dwelling units. A demolition permit will be required for the (existing duplex) as described in this application.

### Public Works:

DRAN: No comments received

DRE: No comments received

### Water Resources:

Applicant must provide a water availability statement from the ABCWUA indicating availability of service and individual metering requirements for the proposed site structures inclusive of the proposed new residence. Resolution of this comment is deferred to BCEH.

### Water Conservation:

The requirement for building permits and the creation of a proposed new structure satisfies the definition of new development. Consequently, the permit must satisfy the conditions of the Bernalillo County Water Conservation Ordinance or, if water is supplied by the ABCWUA, the corresponding requirements of the ABCWUA, whichever is more restrictive.

Total lawn area exceeds 3,000 square feet. High water use turf and other restricted plants shall not be used on more than 3,000 square feet of the landscape area.

Pool may not exceed 500 square feet if it is an ornamental feature. No such restriction applies for a swimming pool. The application is unclear on the nature of the pool.

### Parks & Recreation:

Reviewed. No adverse comment. Any pedestrian access to the Ranchos de Atrisco Lateral is an asset that should be maintained.

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Sheriff's: No comments received

**COMMENTS FROM OTHER AGENCIES**

MRGCOG: No adverse comments

MRGCD: No adverse comments

AMAFCA: No comment

City Planning Department/Development Services: No comments received

City Open Space: No adverse comments

City Public Works:

Transp. Planning: No comments received

Transp. Development: No adverse comments.

City Transit: No comments received

ABCWUA/Utility Development Section: No comments received

City Environmental Health: No comments received

NM Department of Transportation: No comments received

PNM

It is the applicant's obligation to determine and accommodate existing utility easements that cross the property, to dedicate utility easements, and to abide by any conditions or terms of such easements.

Albuquerque Public School:

The requested special use permit for the development of 3 single family dwelling units on a single parcel, located on Lot 4, Block B, Blumingdale Place, on 1028 Ann Ave SW, will affect Armijo Elementary School, Ernie Pyle Middle School, and Rio Grande High School. All three schools have capacity to absorb student growth from new developments in the area.

Loc No	School	2007-08 Projections	2006-07 Capacity	Space Available
215	Armijo	471	504	33
450	Ernie Pyle	692	1,024	332
540	Rio Grande	1,979	2,200	221

**NEIGHBORHOOD ASSOCIATIONS:**

South Valley Coalition of Neighborhood Associations

Southwest Alliance of Neighbors

South Valley Alliance